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URGENCY OF NOW

- We are now faced with the fact that tomorrow is today. We are confronted with the fierce urgency of now. In this unfolding conundrum of life and history, there “is” such a thing as being too late. This is no time for apathy or complacency. This is a time for vigorous and positive action.

Dr. Martin Luther King Jr., March, 1963

OVERARCHING GOAL

- The purpose of this lecture is to outline the development of drug courts and argue for their expansion while exposing the limitations of these problem solving courts.
- Examine some principles and cases in Canada. Examine recent science, principles of problem solving courts, what are general critiques of DTCs (Drug Treatment Courts) and conclusions. See “Long May You Run: Drug Courts in the Twenty-First Century” Berkeley Journal of Criminal Law, Vol. 21:1, Spring 2016, Mangesh Duggal.

Life of a Street Addict

- Addicts share needles, inject hurriedly in alleyways and dissolve heroin in dirty puddle water before injecting it in their veins. In these back alleys, users who overdose are alone and far from medical help. Shared needles transmit HIV and hepatitis C. Unsanitary conditions result in infections. Missing a vein in the rush to inject can mean the development of abscesses.

Life of a Street Addict

- Not taking adequate time to prepare can result in mistakes in measuring proper amounts of substances of the substance being injected. It is not uncommon for injection users to develop dangerous infections or endocarditis. These dangers are exacerbated by the fact that drug users are a historically marginalized population that has been difficult to bring within the reach of health care providers.
- *Canada (Attorney General) v. PHS Community Services Society*, [2011] 3 S.C.R. 134 at 151

Insite Decision – 2011 - SCC

- Background of case
- SCC ordered Federal Govt to allow a safe injection site to operate with appropriate safeguards
- Early 90's, iv drug use had reached crisis levels in Vancouver's East Side (DTES- Downtown East Side)
- Poorest and most vulnerable- many suffered from alcoholism, some were street level sex workers. Histories of serious drug use and mental illness were common themes or pathologies.

Insite Decision – Context of Users

- 460 iv drug users. Not recreational drug users but addicts for whom drug use is both an “effect and cause of life that is a struggle on a day to day basis”.

Historical Backdrop of Insite

- After years of planning and intergovernmental cooperation, a plan was proposed to Health Canada in 2003. Federal permission was sought for criminal immunity for possession and trafficking controlled substances. In September, 2003, Insite began operating as North America's first government sanctioned safe injection site. HOWEVER, SCC, explicitly noted that, "Successful treatment requires acknowledgment of the difficulties of reaching a marginalized population with complex mental, physical and emotional health issues." *Id.*, 148-9.

APPROACH OF DEALING WITH ADDICTION

- There were competing approaches to dealing with addiction but Court confirmed trial judge's findings of following facts:
- Addiction is an illness with one of the primary symptoms being a continuing need or craving to consume the underlying substance
- I.V. Heroin or cocaine use do not cause HIV or Hepatitis C but are an ancillary consequence of the use of unsanitary and unhygienic techniques allowing for the spread of illnesses and diseases among people

COST-BENEFITS ANALYSIS

- Reduction of open air injection use
- No evidence of drug loitering, dealing or petty crime in area around INSITE
- Chinese Business Association reported reduction in crime in area around needle site
- Rate of crime in downtown East side was stable and overall cost/benefits analysis was positive.

Vulcans and California



MORE VULCANS



PRINCIPLES OF ADDICTION MEDICINE

- Doctors Nora Volkow and Kenneth Warren have gathered evidence suggesting chronic drug abuse alters the brain in profound ways causing behavioral disruptions which can last for years. Both scientists say it is important to note the difference between addiction and a state of dependence. While physical dependence results in withdrawal symptoms from abstinence, the adaptations that are responsible for those effects are different from those that underlie addiction.

Diagnosis – Function over Form

- The fifth edition of *Diagnostic and Statistical Manual of Mental Disorders (DSM)* did away with categories of substance abuse and dependence. Instead, the DSM uses the category of “addiction and related disorder”; the change in classification is to link the disorder with the drug in order to capture the “dimensionality” of the disease along with complex neural and behavioral impairments that afflict addicted persons.

Doda and a public health prism.

- In 2010, Justice B. Durno examined the use of “doda” within the Punjabi community in Peel. Doda is the poppy seed of opium and was crushed using grinders and mixed with tea.
- First sentencing involving doda. Medical doctor and social worker gave evidence. Doda powder contains morphine and codeine.
- As part of the sentencing decision, the Superior Court looked at the physical effects of doda and why people consume the drug. The decision utilized a public health prism through expert evidence. The Prosecutor called the evidence which set out both the individual and communal consequences of doda addiction.
- R v. Bhangal, 2010 ONSC 4950

Principles of Problem Solving Courts

There are six operating principles of problem-solving courts. Those are:

- 1) Enhanced Information
- 2) Community Engagement
- 3) Collaboration
- 4) Individualized Justice
- 5) Accountability
- 6) Outcomes

ROBERT V. WOLF, CENTER FOR COURT INNOVATION,
PRINCIPLES OF PROBLEM-SOLVING JUSTICE 2 (2007) 2-4.

Criticisms of Drug Treatment Courts

1. Court Loses Its Neutral Status
2. Due Process Concerns
3. Widening The Net
4. Effectiveness
5. Recidivism
6. Cost Savings
7. Sanctions
8. Treatment

Recidivism – hallmarks of success

- In March 2013, Julian Somers, Stefanie Rezansoff and Akm Moniruzzaman conducted a Canadian study investigating the comparative effectiveness of a DTC among subgroups defined by ethnicity, gender, prior offending and the presence of a co-occurring mental disorder. The results indicate greater reductions in recidivism among Aboriginal participants and no differences in recidivism associated with the presence or absence of co-occurring mental disorders or the number of prior convictions. The effectiveness of DTCs with unique subgroups may be connected to their compositions and inclusion of expertise specific to the needs of the participants.
- Some of the research on the efficacy of DTCs among subgroups of offenders suggests the specific motivations and strength of commitment were good signals for adherence to program requirements and program success.
- Little was known in the Canadian context about how effective drug courts were or the relationship between outcomes and individual traits of offenders. There has been a shallow base of knowledge on how to adapt the U.S. model to other countries based on either difference in underlying legislation (i.e., mandatory minimums, habitual offender laws,

Results of Study

- The target of the study was the Vancouver Drug Treatment Court (DTCV). The Vancouver program includes a larger proportion of females and members of racial or ethnic minorities, specifically Aboriginals vis-a-vis the broader offender population. Data was provided through the British Columbia Inter-Ministry Research Initiative and used data from 1997 to 2010. Recidivism was defined as any convicted offense and all participants were assessed 12 months following involvement with the DTCV
- Out of 659 participants, 259 were excluded from the study. Recidivism was significantly connected to program status with “graduates” showing lower rates of recidivism. In addition, there was a direct correlation between length of time in the program and lower recidivism rates regardless of graduation.
- The results indicated that impact on re-offense differed significantly between sub-groups of participants. Logistic regression analyses revealed superior outcomes among females as well as Aboriginal participants versus Whites and males.
- The Aboriginal community comprises less than 5% of the population in British Columbia but 17% of the offender population in the DTCV. This high demographic representation in the drug court is probably due to several interrelated factors including composition of the population in the catchment area of the court (Vancouver’s Downtown Eastside), the social marginalization of Aboriginal peoples and the uneven distribution of drug related problems between ethnic groups. In light of these external factors, the finding of significantly higher outcomes among Aboriginal DTCV participants was extraordinary. One of the factors leading to the higher outcome is the familiarity of the DTCV team with Aboriginal offenders along with the inclusion of a dedicated Aboriginal liaison.

Public's Expectation of Justice – One Size Does Not Fit All Approach

- Today, a growing awareness of the extent and nature of mental illness and addiction is helping sensitize the public and those involved in the justice system. This sensitization and knowledge is leading to new, more appropriate responses to the problem. One response has been the development of specialized courts – such as mental health courts and drug courts.
- Mental health courts have opened in Ontario. These courts can do much to alleviate the problem. Other problem-solving courts within the Ontario Court of Justice include drug treatment courts and *Gladue* courts, the latter dealing with aboriginal offenders. The point is this: in a variety of ways, throughout Canada we are adapting our criminal law court procedures to better meet the realities of endemic social problems and better serve the public.

It's all About the Parking

